

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE NATIONAL PRESCRIPTION)	
OPIATE LITIGATION)	MDL No. 2804
)	
THIS DOCUMENT RELATES TO:)	Case No. 1:17-md-2804
)	
<i>The Blackfeet Tribe of the Blackfeet Indian</i>)	Judge Dan Aaron Polster
<i>Reservation v. AmerisourceBergen Drug</i>)	
<i>Corporation, et al.</i>)	
Case No. 1:18-op-45749)	
)	

**DEFENDANT ALBERTSON’S LLC’S MOTION FOR LEAVE TO FILE
JOINDER OF MOTION TO DISMISS FIRST AMENDED COMPLAINT**

Defendant Albertson’s LLC (“Albertson’s”) respectfully moves this Court for leave to file the attached Joinder to the Motion to Dismiss Plaintiff’s First Amended Complaint brought by Defendants CVS Pharmacy, Inc., CVS Indiana, L.L.C., Walmart Inc., Walgreen Co., and Walgreen Arizona Drug Co. (“the Moving Defendants”). (See Albertson’s LLC’s Joinder of Motion, attached as Exhibit A).

As more fully explained in the attached joinder, Albertson’s was served with Plaintiff’s First Amended Complaint in January 2019, well after briefing had been completed on the Moving Defendants’ motion to dismiss. As such, Albertson’s was unable to contribute to the Moving Defendants’ motion. Nonetheless, Albertson’s now moves to join the Moving Defendants’ motion to dismiss briefings because the legal arguments raised therein apply with equal force to Plaintiff’s claims against Albertson’s.

Further, Albertson’s seeks to briefly underscore that Plaintiff’s First Amended Complaint is devoid of any substantive factual allegations against Albertson’s, and this failure, on its own, warrants dismissal. Albertson’s also seeks to call the Court’s attention to a recent decision that

was issued after the Moving Defendants' motion to dismiss was fully briefed but that provides further support for the Moving Defendants' arguments. *See State of Delaware, ex rel. Kathleen Jennings v. Purdue Pharma L.P., et al.*, No. CVN18C01223MMJCCD, 2019 WL 446382 (Del. Super. Ct. Feb. 4, 2019).

Additionally, this Court has made clear that plaintiffs should amend their complaints "to remove claims against defendants who should *not* be named." (*See, e.g.*, ECF 739, 1:17-md-02804, at 1) (quotations omitted); (*see also* ECF 397, 1:17-md-02804) (ordering the production of ARCOS data for entire United States to better help MDL proceed based on facts and "not conjecture or speculation"). In light of this order, Albertson's requests that it be given leave to join in the Moving Defendants' Motion to Dismiss in order to give Plaintiff the opportunity to review the facts and dismiss Albertson's from this action.

For these reasons and those more fully explained in the attached joinder, Albertson's respectfully moves this Court for leave to file the attached Joinder to the Moving Defendants' Motion to Dismiss Plaintiff's First Amended Complaint.

Dated: February 15, 2019

Respectfully Submitted,

By: /s/ Francis A. Citera
One of Defendant's Attorneys

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CERTIFICATE OF SERVICE

I, Francis A. Citera, an attorney, certify that I caused a copy of the foregoing Motion for Leave to File Joinder of Motion to Dismiss to be served upon the parties of record using the CM/ECF system which will send notification of such filing on this 15th Day of February, 2019.

/s/ Francis A. Citera
Francis A. Citera